



February 29, 2000

Mr. John L. Schomburger  
Assistant Criminal District Attorney  
County of Collin  
210 McDonald, Suite 324  
McKinney, Texas 75069

OR2000-0770

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134367.

The Collin County Criminal District Attorney received a request for the prosecutor's files in two criminal cases. You seek to withhold the information responsive to the request under sections 552.101, 552.108, 552.111, and 552.130 and 552.027 of the Government Code.

Section 552.111 excepts from required disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 647 (1996), this office concluded that information constituting attorney work product prepared for litigation could be withheld under section 552.111. The decision further found that, pursuant to the rationale set forth in *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993), a request for an attorney's entire litigation file may be denied under section 552.111 where the litigation had concluded. In this instance, the requestor seeks the prosecutor's entire case files for two cases for which it appears that litigation has concluded. Accordingly, except as noted below, you may withhold the two files you submitted pursuant to section 552.111.

Section 552.022(a) of the Government Code requires public release, *inter alia*, of the following categories of information "unless they are expressly confidential under other law":

(1) a completed report, audit, evaluation or investigation made of, for, or by a governmental body, except as provided by section 552.108;

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

....

(17) information that is also contained in a public court record[.]

We have marked a FedEx bill included in the submitted information which we believe is made public by section 552.022(a)(3). You have raised no confidentiality provision with respect to this document such that it would be excepted from the disclosure requirement of section 552.022(a)(3). It must be released.

We note too, that much of the submitted information consists of pleadings in connection with the prosecution of the two cases for which the litigation files are requested. Again, you have raised no confidentiality provision with respect to these records such that they would be excepted from the disclosure requirement of section 552.022(a)(17) if they are contained in public court records. To the extent that the submitted information included records also contained in public court records, such records must be released.<sup>1</sup>

The submitted records also contain what appear to be law enforcement offense reports. In our opinion, except for confidential information contained therein, these reports must be released pursuant to section 552.022(a)(1) unless they are subject to the section 552.108 exception, as provided by section 552.022(a)(1). We address your section 552.108 claim with respect to these offense reports.

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an

---

<sup>1</sup>We note that we do not believe that the court records at issue could be said to be “commercially available” within the section 552.027 exception to disclosure of such information.

attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

With regard to your section 552.108 claim, you state that the submitted records

were prepared or collected by attorneys in anticipation of or in the course of preparing for litigations, or deal with the prosecution and investigation of criminal activity which did not result in conviction or deferred adjudication. [Others] reflect the legal reasoning or impressions of the attorneys representing the state. . . . Further, the release of the documents would interfere with the detection, investigation, and prosecution of crime. These are names of witnesses contacted in the investigation. If people know that their activities and conversations with law enforcement will be revealed, they will not cooperate with law enforcement in the future.

In our opinion, you have not established that release of the offense reports at issue would interfere with law enforcement or that the reports would otherwise fall within the protection of section 552.108. You have not established, nor is it apparent on the face of the records, that the cases related to the offense reports did not result in conviction or deferred adjudication such that the reports would fall within the ambit of section 552.108(a)(2) or (b)(2). Also, these documents do not appear to reveal the identities of witnesses. Moreover, we do not believe that these documents were either "prepared by an attorney" or reflect his "mental impressions or legal reasoning" within the meaning of section 552.108(a)(3) or (b)(3). Accordingly, none of the information in the offense reports may be withheld under section 552.108.

The reports do however contain information which is confidential by law and must be withheld. Section 552.130 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if the information relates to:
  - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
  - (2) a motor vehicle title or registration issued by an agency of this state[.]

The records at issue contain drivers license and license plate numbers that are made confidential under section 552.130. You must withhold these types of information pursuant to section 552.130.

The reports also contain social security numbers which may be confidential. Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Any social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code and must be withheld. Except as noted above, you must release the offense reports included in the submitted information.

In summary, you may generally withhold as attorney work product under the *Union Fire Insurance* case the requested prosecutors' files. The marked FedEx bill and any public court records contained in the files must be released under sections 552.022(a)(3) and (a)(17). The offense reports contained in the files must be released under section 552.022(a)(1) except for drivers license and license plate numbers, which are made confidential under section 552.130, and except for any social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990. Such social security numbers are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code and must be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

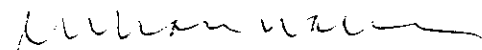
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 134367

Encl. Submitted documents

cc: Mr. Mark Gilliam  
P.O. Box 774  
Glendale, Arizona 85311  
(w/o enclosures)